

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

LOUISIANA PUBLIC SERVICE COMMISSION
EX PARTE

DOCKET NO. R-29564

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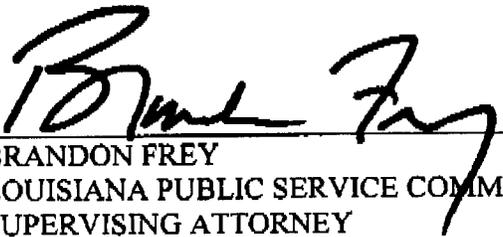
In re: Possible amendments to the "Local Competition Regulations", as most recently modified by the General Order dated October 31, 2005 and Possible Amendments to the General Order dated March 18, 1994 requiring Commission approval of Transfers of Control of Public Utilities Subject to the Commission's Jurisdiction.

STAFF'S FINAL RECOMMENDATION

The findings and conclusions recommended by Staff in this rulemaking proceeding are contained within the recommendation following this cover page.

This final recommendation is being issued pursuant to the Rules of Practice and Procedure of the Louisiana Public Service Commission and is being considered by the Commission at its November 29, 2006 Business and Executive Session.

Baton Rouge, Louisiana, this 27th day of November, 2006.


BRANDON FREY
LOUISIANA PUBLIC SERVICE COMMISSION
SUPERVISING ATTORNEY

cc: Official Service List

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**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION
BATON ROUGE, LOUISIANA**

**LOUISIANA PUBLIC SERVICE COMMISSION
EX PARTE**

DOCKET NO. R-29564

In re: Possible amendments to the "Local Competition Regulations", as most recently modified by the General Order dated October 31, 2005 and Possible Amendments to the General Order dated March 18, 1994 requiring Commission approval of Transfers of Control of Public Utilities Subject to the Commission's Jurisdiction.

STAFF'S FINAL RECOMMENDATION

BACKGROUND

In its Official Bulletin dated June 16, 2006, the Louisiana Public Service Commission ("Commission" or "LPSC") opened the above referenced docket to consider possible amendments to the Commission's Regulations for Competition in the Local Telecommunications Market ("Local Competition Regulations") as most recently modified by the General Order dated October 31, 2005, and the General Order dated March 18, 1994¹ ("3/18/94 General Order"), which requires the Commission's approval and/or non-opposition to transfers of control of public utilities subject to the Commission's jurisdiction.

Currently, the Commission's 3/18/94 General Order requires all jurisdictional utilities and common carriers to seek the Commission's prior approval or non-opposition to any sale, transfer, lease or other encumbrance of any part of the utility's operations.

¹ General Order dated March 18, 1994, *In re: Commission Approval Required of Sales Leases, Mergers, Consolidations, Stock Transfers, and All Other Changes of Ownership or Control of Public Utilities Subject to the Commission's Jurisdiction.*

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assets, etc., regardless of the method used to accomplish said transaction, when the values involved exceed one percent of the regulated utility or common carrier's gross assets. When this Order was enacted, competition in the local and long distance telecommunications market was essentially non-existent. Thus, the Order only applied to the small number of Telecommunications Service Providers ("TSPs") in existence at that time. Following the adoption of the Local Competition Regulations in 1996, a large number of TSPs have been certificated by the Commission. These providers offer a variety of competitive services in the local, long distance, wholesale, wireless and data markets. Additionally, through the restructuring of the telecommunications industry, a large number of financing and transfer transactions have occurred involving these providers. While essentially all of these transactions are uncontested, and ultimately have no impact on end-user customers of the providers, they are nonetheless subjected to the requirements of the 3/18/94 General Order. Finally, as these transactions require approval in a number of jurisdictions, and often contain aggressive timelines for completion, time is of the essence in issuing the Commission's approval or non-opposition. In accordance with the above, Staff has sought comments on the following specific rule changes:

Section 301 M. shall be added to the Local Competition Regulations to read as follows:

M. No TSP shall transfer control or ownership of any assets, common stock or other indicia of control of the carrier to any other person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated company or any other entity or divide into two or more common carriers, where the values involved in such transaction exceed one percent (1%) of the gross assets of such regulated common carrier, or subsidiary thereof, without prior notice to the Commission. Such notice shall include information identifying the parties involved, a summary description of the transaction, and a public interest statement.

Such transfer is deemed approved upon the filing of the required notice by a TSP, provided, however, that the Commission through its Executive Secretary shall have the right, within 15 days of the publication of the notice in the Commission's Official Bulletin, to initiate a proceeding and, after notice to and comments from the applicants and interested parties, reject, require modification of, or impose conditions on any transfer found to be contrary to the public interest.

In the case of a corporate restructuring, internal transfer or any other change in form or name that does not result in a change of the ultimate ownership or control of the TSP or its assets, or in the case of a mortgage, encumbrance, or other financing transaction where the values involved in such transaction exceed one percent (1%) of the gross assets of such regulated common carrier, the TSP shall file a notice of such transaction within seven (7) business days of the consummation of the transaction or change. Such notice shall include information identifying the parties involved, a summary description of the transaction, and a public interest statement.

This section and the procedures outlined herein shall apply to all TSPs, excluding ILECs. Further, the procedures contained herein shall supersede the requirements of the March 18, 1994 General Order with respect to the covered TSPs.

The March 18, 1994 General Order shall be modified to include the following language as section 6.

6. This Order shall be superseded by Section 301 M. of the Commission's Regulations for Competition in the Local Telecommunications Market for the classes of TSPs contained therein.

Consistent with the above directive, comments were received from BellSouth Telecommunications, Inc. ("BellSouth"), Level 3 Communications, LLC ("Level 3") and Sprint Nextel. Additionally, interventions were filed, but no comments received, from the following parties: Occidental Chemical Corporation and the Small Company Committee of the Louisiana Telecommunications Association ("SCC").

JURISDICTION

As stated in Article IV § 21 of the Louisiana Constitution of 1974, the Commission has the authority to:

“regulate all common carriers and public utilities and has all other regulatory authority as provided by law. The Commission shall adopt and enforce reasonable rules, regulations and procedures which are necessary for the discharge of its duties including other powers and duties as provided by law.”

Pursuant to its constitutional authority, the Commission has adopted numerous rules and regulations applying to entities subjected to its jurisdiction, including the Local Competition Regulations², as most recently amended by the October 31, 2005 General Order and the 3/18/94 General Order, both of which apply to telecommunications carriers subject to the Commission’s jurisdiction.

SUMMARY OF COMMENTS RECEIVED

Sprint Nextel’s Comments

Sprint Nextel filed comments supporting the proposed amendments, arguing the streamlined procedures will free up valuable Commission resources for more pressing matters, yet still afford the Commission the protections in needs in reviewing these transactions, while at the same time lower the costs for competitive telecommunications providers to provide service in Louisiana.

BellSouth’s Comments

BellSouth supports Staff’s efforts to streamline the approval process, as it is appropriate to reflect the new environment in the telecommunications market. However,

² The actual Regulations are contained in “Appendix B” to the General Order.

BellSouth argues there is no compelling basis for excluding a class of TSPs, namely ILECs, from the streamlined processes. Absent "very compelling" reasons, BellSouth argues the rules and regulations should apply to all TSPs. BellSouth further argues that any concerns the Commission may have are protected by the fact that the Commission may at any time during the informational publication period determine to initiate a proceeding to review the filing in more detail.

Additionally, BellSouth seeks clarification as to whether third parties have the ability to invoke a proceeding once a docket is published, as well as a clarification of the "1 %" rule, suggesting it is unclear whether the proposed rule referencing mortgages applies only to those transactions that exceed 1 % of the gross assets, or those that do not exceed 1 %. Finally, BellSouth seeks clarification as to the effect of a transaction subjected to the 7-day notice rule.

Level 3's Comments

Level 3 argues that under the Commission's existing rules, Staff and TSP assets are misused by requiring publication and uncertain regulatory delays which can result in higher interest rates, lost revenues, inefficient service and adverse tax implications due to uncertain regulatory delays. Level 3 points out that the 3/18/94 General Order, when adopted, facilitated Commission oversight to protect captive ratepayers of monopoly and price regulated utilities. Finally, Level 3 believes the amendments as proposed provide an appropriate balance between recognizing the competitive and time sensitive nature of the transactions and still provide the Commission with the ability to take appropriate regulatory action should it deem fit.

STAFF'S PROPOSED RECOMMENDATION

Staff appreciates the comments received, and notes that all commenters are in agreement that the streamlining of the Commission's non-opposition procedures will be beneficial to the industry. In order to verify the actual number of letters of non-opposition filed under the Commission's March 18, 1994 General Order, Staff reviewed the Commission's Official Bulletins for the past 12 months. During this time period, the Commission docketed 84 requests for letters of non-opposition. Of these 84 requests, Competitive Local Exchange Carriers or CMRS providers filed 56³. Thus, the streamlining rules proposed herein would apply to two-thirds of recent requests for letters of non-opposition received by the Commission. Additionally, the CLEC and CMRS providers are the only group of utilities filing requests for letters of non-opposition whose rates are not regulated by the Commission. The remainder of the filings reviewed was made by utilities whose rates are regulated through rate of return or incentive regulation by the Commission, a distinction shared in the TSP world only by ILECs. Finally, a number of the non-TSP requests for letters of non-opposition also invoke the requirements of the Commission's 11/13/96 General Order, *In re: Commission approval of security issues and assumptions of liability*. By virtue of La R.S. 45:1173(2), TSPs are exempt from the requirements of the 11/13/96 General Order.

Simply put, over two-thirds of the letters of non-opposition received and reviewed by the Commission under the requirements of the general order are filed by a group of utilities, many of which were not in existence at the time the 3/18/94 General Order was enacted. Staff must additionally note that these transactions do not require a Commission

³ One of these requests filed by a TSP was BellSouth's proposed merger with AT&T, reviewed in Docket S-29427. It was the only request for a letter of non-op filed by a TSP during the past 12 months in which interventions were received.

vote, as they are docketed as "S" or "Staff" dockets, and thus are processed on a Staff level unless interventions to the requests are received. Nothing in this proposed rule would change the Commission or Staff's roles in reviewing the filings.

Turning next to the concerns raised by BellSouth, Staff would first note that BellSouth and other ILECs, while currently regulated pursuant to consumer price protection plans, are subject to the Commission's constitutional ratemaking jurisdiction, and as such are akin to the other classes of utilities to whom the existing rules would continue to apply. Secondly, ILECs as a class are subjected to more onerous regulatory requirements both on the state and federal level by way of their status as incumbent carriers. Finally, a recent example for separate ILEC treatment is the request for non-opposition to the merger of AT&T and BellSouth, which was filed pursuant to the 3/18/94 General Order. That particular filing was the subject of numerous interventions and filings, and is a transaction also awaiting approval from the Federal Communications Commission. Not surprisingly, and consistent with the proposed rules contained herein, it was the only request in the past year filed by a TSP that was also an ILEC in Louisiana, and is also the only request filed by a TSP in which interventions were received. Thus, based on the above, Staff believes several compelling reasons exist to treat filings received from ILECs in a different manner.

BellSouth has also requested additional clarification from Staff as to the method by which the time periods described in the streamlining rules will be applied. With respect to the concerns raised by BellSouth, Staff contemplates the rules, if adopted, will operate much like the Commission's existing rules governing tariff filings. Thus absent intervention, or Staff inquiry, matters filed are deemed approved once the

intervention/information period has expired. Under this scenario, a filing published under the "15 day" time frame is deemed approved on the 16th day, absent intervention or inquiry. The same analysis will apply to those filings subjected to the 7-day notice requirement. To further clarify the application of the rule, the 7-day notice rule applies to those transactions that exceed 1% of the assets, but which are financial in nature and do not involved a change in control.

DISCUSSION OF COMMENTS AND STAFF'S FINAL RECOMMENDATION

Following issuance of its Proposed Recommendation, Staff provided the parties with the opportunity to file additional comments. Pursuant to this directive, Comments were received from BellSouth and the SCC. As set forth in its comments, BellSouth reemphasizes its position that ILECs should not be exempted from these streamlining rules, and seeks clarification on the impact of the transactions not involving a change in control. The SCC in its comments seeks a clarification that the rules will require a mandatory publication and notice filing in the Commission's Official Bulletin. Additionally, the SCC seeks clarification, much like BellSouth, on the impact of the transactions not involving a change of control, but still subject to the regulations.

Staff's appreciates the comments of BellSouth and the SCC, and the discussion these comments has initiated, which Staff believes will ultimately result in the intent of the rules being captured in the modification to the Local Competition Regulations. As the SCC has suggested in its comments, it has always been Staff's intent that the publication period of 15 days for changes in control would require publication subject to intervention. Indeed, as the fundamental purpose of these rules is to streamline the approval process

absent intervention or further inquiry. Staff is in support of any clarification to that affect. Additionally, after a thorough review of the comments filed and the applicable Commission General Orders, and in particular the 11/13/96 General Orders, Staff is of the opinion that no streamlining rule is necessary with respect to financial transactions as originally contemplated, as the type of transactions contemplated herein would be subject to the 11/13/96 General Order, and therefore exempt. Thus, by incorporating a "7-day rule" with respect to those types of transactions, the Commission would likely be creating an additional regulatory requirement where one did not previously exist. Finally, Staff does believe it is important to clarify an unwritten rule of the Commission with respect to name changes. While traditionally TSPs have requested letters of non-opposition to name changes, neither the Local Competition Regulations, nor the 3/18/94 General Order provide guidance on how to make such a filing. Staff believes it would be beneficial to all TSPs, including ILECs, to clarify the method in making such a filing. Thus, in accordance with the above, Staff recommends the following changes to the Commission's Local Competition Regulations and the 3/18/94 General Order.

Section 301 M. shall be added to the Local Competition Regulations to read as follows:

M. (1) No TSP shall transfer control or ownership of any assets, common stock or other indicia of control of the carrier to any other person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated company or any other entity or divide into two or more common carriers, where the values involved in such transaction exceed one percent (1%) of the gross assets of such regulated common carrier, or subsidiary thereof, without prior notice to the Commission. Such notice shall include information identifying the parties involved, a summary description of the transaction, and a public interest statement.

Any notice filed pursuant to subsection M (1) above shall be published in the Commission's Official Bulletin with a 15-day period for any party in interest to file an intervention or protest. If no intervention or protest is filed by a

party in interest within the 15-day period, the transfer shall be deemed approved. If a timely intervention or protest is filed by a party in interest, the Commission through its Secretary shall initiate a proceeding and, after notice to and comments from the applicant(s) and party in interest, may reject, require modification of, or impose conditions on any transfer found to be contrary to the public interest.

This section and the procedures hereunder shall apply only to TSPs other than ILECs. Nothing in this section shall affect the application of any Commission rules, regulations or orders applicable to ILECs.

(2) If a TSP changes its corporate name, the TSP shall file a notice of such name change with the Commission within ten (10) business days of the name change.

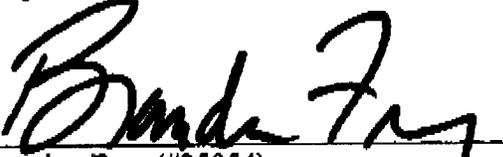
The March 18, 1994 General Order shall be modified to include the following language as section 6.

6. This Order shall be superseded by Section 301 M. of the Commission's Regulations for Competition in the Local Telecommunications Market for the classes of TSPs contained therein.

CONCLUSION

For the reasons stated herein, Staff recommends its proposed changes to the Commission's Local Competition Regulations and 3/18/94 General Order, as outlined above, be adopted.

Respectfully submitted this 27th day of November, 2006,


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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing filing was mailed postage prepaid to all parties of record on 27th day of November 2006.



Brandon Frey
Louisiana Public Service Commission

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